

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFREY STEPHENS, *et al.*,

Defendants.

CASE NO. CR21-0129-JCC

ORDER

This matter comes before the Court on the Government's motion for a protective order (Dkt. No. 44). Having thoroughly considered the motion and the relevant record, the Court hereby GRANTS in part and DENIES in part the motion and ORDERS the parties to comply with the following protective order.

A. Note-Taking Prohibitions

The Government moves for a standard protective order but would add prohibitions on the Defendants' abilities to take and retain notes on the protected discovery. (Dkt. No. 44-1 at 2-3.) Defendant Stephens objects to the extent the proposed order precludes in-custody defendants from taking any notes on the protected discovery. (Dkt. No. 45.) Similarly, Defendant Conry objects to the extent it prohibits defendants on pretrial release from retaining any notes taken while reviewing the protected discovery. (Dkt. No. 46.) The parties stipulate to the remainder of

1 the order.¹ (*See* Dkt. Nos. 44, 45, 46.)

2 “[T]he court may, for good cause, deny, restrict, or defer discovery or inspection, or grant
3 other appropriate relief.” Fed. R. Crim. P. 16(d)(1). The party seeking a protective order bears
4 the burden of showing that there is good cause for the Court to issue the order. *Id.* “Broad
5 allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not
6 support a good cause showing.” *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir.
7 1986) (internal quotations omitted).

8 The Government argues the additional note-taking prohibitions are necessary to ensure
9 witness safety and prevent destruction of evidence. (Dkt. No. 47 at 3–4.) In support, the
10 Government cites Defendants’ prior statements indicating both a willingness to use violence and
11 contempt for the Government generally. (*Id.*)

12 Additionally, the Government argues the request is not unprecedented because a similar
13 note-taking prohibition was granted in another case, *U.S. v. Calvert-Majors*. (*Id.* at 2 (citing
14 CR21-0053-RSM, Dkt. No. 51 (W.D. Wash. 2021).) But *Calvert-Majors* is distinguishable
15 because there, as with other cases in this District granting such note-taking prohibitions, the
16 defendants stipulated to the prohibition. *See, e.g., Calvert-Majors*, CR21-0053-RSM, Dkt. No.
17 51 (W.D. Wash. 2021); *Payan-Cruz*, CR18-0278-JCC, Dkt. No. 41 (W.D. Wash. 2019). Here,
18 Defendants have not stipulated to these terms. (*See generally*, Dkt. Nos. 45, 46.)

19 The terms of this protective order prohibit Defendants from disseminating the protected
20 discovery materials. Defendants also remain subject to the laws and rules against witness
21 tampering and destruction of evidence. The Government’s broad allegations related to
22 destruction of evidence and witness safety fail to establish good cause to deny Defendants the
23 ability to take notes on the evidence against them. Absent particularized concerns about

24 ¹ The Court need only make a good cause finding for the portions of the protective order not
25 stipulated. *See In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th
26 Cir. 2011). Accordingly, the disputed note-taking prohibitions are the only provisions the Court
will analyze.

1 Defendants' conduct in this case, additional note-taking prohibitions are not warranted at this
2 time.

3 **B. Protective Order**

4 **Protected Material.** For purposes of this Order, "Protected Material" shall include
5 (1) grand jury testimony; (2) witness statements; (3) tax information; (4) financial information;
6 (5) subscriber information (including phone and utility subscriber information for uncharged
7 individuals); (6) identifying information regarding undercover agents used in the course of the
8 investigation, including audio, video, photographic, and written recordings of these agents;
9 (7) other personal identifying information ("PII")² obtained during the investigation, including
10 but not limited to personal information about defendants and third parties (such as photographs,
11 including sexually suggestive photographs, and photographs, identifying information, and
12 contact information for family members, other defendants, and/or witnesses); and (8) other
13 sensitive information obtained from the search of social media, cellular telephones, and other
14 digital devices seized during the investigation.

15 Materials believed by the Government to be Protected Material will be so designated by
16 the Government.

17 **Production of Protected Material to the Defense.** The United States will produce
18 discovery, including Protected Material, to counsel for each defendant. Possession of copies of
19 the Protected Materials is limited to attorneys of record and investigators, paralegals, law clerks,
20 experts and assistants for the attorneys of record (hereinafter collectively referred to as
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22 ² "PII" includes, but is not necessarily limited to, the information identified in Federal Rule of
23 Criminal Procedure 49.1(a) and includes full names, dates of birth, Social Security numbers (or
24 other identification information), financial account information (including account numbers), tax
25 information, driver's license numbers, addresses, telephone numbers, locations of residences or
26 employment, medical records, school records, juvenile criminal records, and other confidential
information. The Government has endeavored to redact PII as appropriate, but the parties
acknowledge and agree that this will not always be possible, and that in some instances un-
redacted PII may be necessary to either the prosecution or the defense, or both.

1 “members of the defense team”). The attorneys of record are required, prior to disseminating any
2 copies of the Protected Materials to their staff or any other members of the defense team, to
3 provide a copy of this Protective Order to every staff member and member of the defense team
4 and ensure that members of the defense team are aware of the terms of this Protective Order.

5 **Review of Protected Material by Defendants.** The attorneys of record and members of
6 each defendant’s defense team may share and review the Protected Material with their respective
7 defendant. Defendants who are residing at the Federal Detention Center (FDC) will be permitted
8 to review the Protected Material, consistent with the regulations established by the BOP, with or
9 without their respective counsel, in a controlled environment at the Federal Detention Center
10 (FDC), but will be prohibited from printing out, copying, or disseminating the discovery.

11 Defendants who are on pretrial release will be permitted to review the Protected Material at the
12 offices of their counsel, but will be prohibited from printing out, copying, or disseminating the
13 discovery.

14 **Limits on Dissemination of Protected Materials.** The attorneys of record and members
15 of the defense team are prohibited from duplicating or providing copies of the Protected Material
16 to other persons, including to any defendant, unless the personal or financial information
17 contained therein belongs specifically and solely to the defendant receiving the material (*e.g.*, a
18 defendant may be provided with the download of his own cellular phone). This order does not
19 limit employees of the United States Attorney’s Office for the Western District of Washington
20 from disclosing the Protected Material to members of the United States Attorney’s Office,
21 federal law enforcement agencies, witnesses, and the Court and defense counsel as necessary to
22 comply with the Government’s discovery obligations and to investigate and prosecute the case.

23 **Future Production of Additional Protected Materials.** Additional types of discovery
24 items may be deemed by the parties to constitute Protected Material upon agreement or (if no
25 agreement can be reached) by further order of the Court.

1 **No Waiver.** Nothing in this order should be construed as imposing any substantive
2 discovery obligations on the Government that are different from those imposed by case law and
3 Rule 16 of the Federal Rules of Criminal Procedure. The failure to designate any materials as
4 provided in paragraph 2 shall not constitute a waiver of a party's assertion that the materials are
5 covered by this Protective Order.

6 **Use of Protected Material in Court.** Any Protected Material that is filed with the Court in
7 connection with pretrial motions, trial, or other matter before this Court shall be filed under seal and
8 shall remain sealed until otherwise ordered by this Court. This does not entitle either party to seal
9 their filings as a matter of course. The parties are required to comply in all respects with the relevant
10 local and federal rules of criminal procedure pertaining to the sealing of court documents.

11 **Non-Termination.** The provisions of this Order shall not terminate at the conclusion of
12 this prosecution. Furthermore, at the close of this case, defense counsel shall return the Protected
13 Material, including all copies of the Protected Material, to the office of the United States
14 Attorney, or otherwise certify that the material has been destroyed.

15 **Violation of Order.** Any person who willfully violates this order may be held in
16 contempt of court and may be subject to monetary or other sanctions as deemed appropriate by
17 this Court.

18 **Modification of Order.** Nothing in this Stipulation shall prevent any party from seeking
19 modification of this Protective Order or from objecting to the improper designation of discovery
20 as Protected Material. In either event, counsel shall first confer with the Government to attempt
21 to resolve the issue. If the parties are unable to resolve the dispute, counsel may raise the issue
22 with the Court by way of a motion.

23 **Agreement to Provide Copies of Protected Material to Defendants.** Upon agreement
24 of counsel for the Government, members of a defense team may provide copies of specific
25 Protected Material, or redacted versions of such material, to a defendant. When seeking the
26 Government's agreement to give such a copy to a defendant, members of the defense team will

1 identify with reasonable particularity, including (where available) the specific Bates-numbered
2 pages and or recording descriptions, the specific material defense counsel proposes to give to the
3 defendant. Unless expressly stated otherwise by the government, copies of Protected Material to
4 be provided to the Defendants will continue to be Protected Material subject to all of the
5 protections of the Court's Order, with the sole exception that a copy can be given only to the
6 Defendants (and not shared with anyone else outside the defense team). If Government counsel
7 and defense counsel cannot reach agreement on whether particular portions of the Protected
8 Material or redacted versions of Protected Material should be given to the Defendants under
9 these conditions, defense counsel may raise the issue with the Court by way of a motion.

10 **No Ruling on Discoverability or Admissibility.** This Protective Order does not
11 constitute a ruling on the question of whether any particular material is properly discoverable or
12 admissible and does not constitute any ruling on any potential objection to the discoverability of
13 any material.

14 **No Ruling on Timing of Production.** This Protective Order does not require the
15 Government to provide particular discovery at a time or in a fashion inconsistent with applicable
16 law.

17 **Addition of Defendants after Entry of Order.** This Protective Order applies to any
18 additional defendants later charged in this case.

19 The Clerk of the Court is directed to provide a filed copy of this Protective Order to all
20 counsel of record.

21 DATED this 30th day of November 2021.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE